IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 72 OF 2005

M/s. Sadashiv Morajkar
Construction Pvt. Ltd., a private
limited company incorporated and
constituted under Companies
Act, 1956, having its Office at 2C,
2nd Floor, Shantadurga Apartment,
Behind Poshak Morod, Mapusa,
Goa. ... Petitioner

Versus

1. Government of Goa,
through Secretary,
PWD, Office of the Secretary,
PWD, Government of Goa,
Secretariat, Panaji, Goa,

2. Superintending Engineer,
Circle III, Office of the
Superintending Engineer,
Circle III, PWD Building,
Altinho, Panaji, Goa,

3. The Executive Engineer,
Works Division XIII (R),
PWD, Office of the
Executive Engineer, Works
Division XIII, PWD,
Mapusa, Goa, and

4. M/s S & S Constructions,
a partnership firm duly
constituted and incorporated
under Partnership Act, 1932,
having office at Shetyewaddo,
Duler, Mapusa, Goa. ... Respondents.

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, advocate for the petitioner.

Mr. M. B. D'Costa, Advocate General with Mr. J. A. Lobo, Additional Government Advocate for respondent nos. 1 to 3.

Mr. D. P. Bhise, advocate for respondent no.4.

CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE : 19th April, 2005.

ORAL JUDGMENT (Per Lavande, J.)

Rule. Learned counsel for the respondents waive notice. By consent heard forthwith.

2. Heard Mr. S. G. Dessai, learned Senior Counsel with Mr. Shivan Dessai, for the petitioner, Mr. M. B. Da Costa, learned Advocate General with Mr. J. A. Lobo, learned Additional Government Advocate for respondent nos.1 to 3 and Mr. Bhise, learned advocate for respondent no.4.

3. The petitioner has filed the present petition challenging the decision of respondent nos. 1 to 3 not to open the tender submitted by the petitioner as well as the decision to award the tender to the respondent no.4. Respondent no. 3 invited tenders on behalf of the Governor of Goa, for the work of improvement and hot mixing of road from Monte de Guirim High School to St. Anthony's

Chapel at Ferrao Waddo via Guirim Cross in a length of 1300 kms in Saligao Constituency. The estimated cost of the tender was Rs.22,31,036/- with an Earnest Money Deposit (EMD) of Rs.55,776/- . The tender had to be submitted in a sealed cover and condition no.8 required that the EMD amount (unless exempted) would be accepted in the form of a Demand Draft or a Deposit at Call Receipt (DCR) of Schedule Bank guaranteed by the Reserve Bank of India, payable at Mapusa, Goa, and the same was to accompany each tender. The last date for receiving the tender which was initially fixed on 18th January, 2005, was extended to 25th January, 2005. The petitioner submitted his tender on 25th January, 2005 in the prescribed form alongwith the EMD of Rs.55,776/- by Demand Draft payable at Panaji, Goa, instead of Mapusa, Goa, as the concerned Bank had a branch in Panaji only and had no branch in Mapusa, Goa. The tender submitted by the petitioner was not opened by respondent no.3 on the ground that the Demand Draft submitted by the petitioner was not payable at Mapusa, Goa in terms of Condition no.8 of the tender notice.

4. By this petition, the petitioner has challenged the decision of the respondent nos. 1 to 3 not to open the tender of the petitioner on the ground that the Demand Draft submitted by the petitioner was payable at Panaji, Goa and not at Mapusa, Goa.

5. Mr. M. B. D'Costa, learned Advocate General appearing on behalf of respondet nos.1 to 3, upon taking instructions, has submitted that the respondent nos.1 to 3 will open the tender of the petitioner on Monday, 25th April, 2005 and in the event the petitioner is awarded the tender, the petitioner be directed to pay collection charges in respect of the Demand Draft submitted by the petitioner. Mr. S. G. Dessai, learned Senior Counsel on behalf of the petitioner, has stated that the petitioner has been and is ready and willing to pay the collection charges within the time fixed by this Court, in the event the tender is awarded to the petitioner. Mr. Bhise, learned counsel appearing for the respondent no.4 submitted that his client will abide by the decision taken by the Government.

6. In view of the statement made by the learned Advocate General we direct respondent nos. 1 to 3 to open the tender submitted by the petitioner on Monday, 25th April, 2005, and after considering the same on merits, take appropriate decision. In the event the tender is awarded to the petitioner, the petitioner shall pay the collection charges fixed by respondent nos.1 to 3, within three days from the date the petitioner is called upon to pay the collection charges. Consequently, the decision of of respondent nos.1 to 3 to award the tender to the respondent no.4 is quashed and set aside.

7. Rule is made absolute in the aforesaid terms. Having regard to the facts and circumstances of the case, we direct the parties to bear their own costs.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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